

Intra-Service Section 7 Biological Evaluation Form – Legacy Region 6

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Date Submitted:

10/20/2020

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- I. **Service Program and Geographic Area or Station Name:** Migratory Bird Management Program, Lakewood, CO
- II. **Flexible Funding Program** (e.g. Joint Venture, etc.) if applicable:
- III. **Location:** The Campbell Hill Wind Energy project (“Project”), a 200-megawatt (MW) wind farm is located in west-central Converse County, Wyoming, approximately 12 miles northwest of the town of Glenrock.
- IV. **Species/Critical Habitat:** Five species listed as federally endangered or threatened under the Endangered Species Act (ESA) may occur in the Project area or have potential to be affected by the proposed action. These species include the piping plover (*Charadrius melodus*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), Ute ladies’-tresses (*Spiranthes diluvialis*), and western prairie fringed orchid (*Platanthera praeclara*). Additionally, monarch butterfly (*Danaus plexippus*), a candidate species for listing under ESA, could potentially occur in the Project area.
- V. **Project Description:** The Project encompasses 12,749 acres of private lands. Topography in the Project area varies from relatively large areas of little topographic relief in the southern portion of the Project area to areas of greater topographical variation in the north, including numerous ridges and hills. Elevations within the Project area range from approximately 5,200 to 5,900 feet above sea level. The Project consists of a total of 66 General Electric 1.5-megawatt wind turbines with a rotor diameter of 77 meters. Total turbine height is 118.5 meters (388.8 feet). However, one turbine (Turbine 23) at the Project failed in 2020 and will be replaced with General Electric 1.6-megawatt wind turbine with a rotor diameter of 97 meters. Total turbine height of this turbine is 128 meters (421.6 feet). All turbine nacelles, including the new turbine 23, are situated on 80-meter-tall steel tubular towers secured to a concrete foundation. Turbines are situated on turbine pads that are each 15 meters in diameter. Construction of the Project began on March 2, 2009, and the Project went into commercial operations on December 11, 2009.

An initial phase of standardized post-construction mortality monitoring and eagle nest surveys were conducted from 2011 through 2013 pursuant to the Wyoming Industrial Siting permit requirements and recommendations from the Project Technical Advisory Committee. Additionally, an Enhanced Fatality Monitoring system, including Wildlife Incident Monitoring and Reporting was implemented in 2014 to 2016.

Eagle fatalities have been recorded at the Project and other Duke wind-energy projects. Consequently on November 4, 2013, Duke Energy Renewables pleaded guilty, in US District Court, to two counts of Unlawful Take of Migratory Birds. Resulting from this were fines,

restitution, and community service in form of a probationary period including a list of Mandatory Conditions of Probation. This includes the implementation of a Migratory Bird Compliance Plan (MBCP) which was developed with assistance from the U.S. Fish and Wildlife Service (Service). The purpose of the MBCP is to outline a framework for implementation of avoidance and minimization measures to ensure compliance under requirements of Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA).

Pursuant to the MBCP, the Service and Duke Energy worked together on a second phase of standardized post-construction, eagle-mortality monitoring. The MBCP will remain in place until it's replaced by the Incidental Eagle Take Permit (IETP) aka Programmatic Take Permit. The operator submitted the permit application and Eagle Conservation Plan (ECP) to the Service on December 23, 2015, however the service requested that Duke Energy re-submit their permit application so it can incorporate the most recent rules, regulation, and guidance and an updated ECP.

The need for the federal action is necessitated by the Service Legacy Region 6, receiving an application from Duke Energy for an incidental take permit for the take of bald or golden eagles associated with the existing Project. The Applicant is requesting a permit for the take of bald and golden eagles over the 30-year project.

VI. Determination of Effects:

(A) Description of Effects:

Ute ladies' tresses

No ground disturbing activities are being proposed. The incidental take permit (if issued) will require post-construction surveys as a condition of the authorization. Post-construction surveys would be conducted on foot, utilizing existing roads for access. Typically, post-construction surveys are conducted in a square plot measuring 160 meters by 160 meters (based on a recently issued permit) centered around each turbine. If a surveyor spots an eagle they will walk up to it and record information. Therefore, in each 160 square meters survey plot, the surveyor will walk four transects across the survey plot and will additionally walk from the end of one transect to the next and will also walk to investigate eagles spotted from the transect line.

The general Project site does overlap the Area of Influence (AOI) defined for this species. Specifically, five wind turbines are located in the AOI, however, those areas do not contain wetland and/or riparian features known to be associated with habitat requirements for this species (see Figure 1). The AOI identifies areas to consider potential effects of the proposed action to the species and designated and proposed critical habitat. The AOI typically encompass areas larger than where the species is expected to occur because of consideration for direct and indirect effects to the species and habitat.

No suitable habitat is present in the turbine-related potential survey plot areas. It is determined that the proposed action of issuing an eagle take permit for the existing Campbell Hill Wind Project will result in no effect to Ute ladies'-tresses.

Campbell Hill Wind Project Intra-Service Section-7 Biological Evaluation

Legacy Region 6



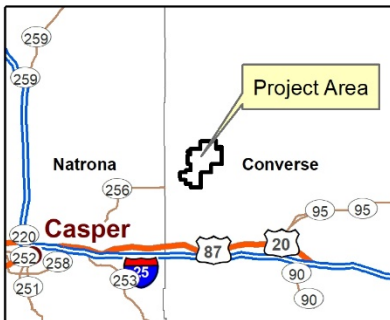
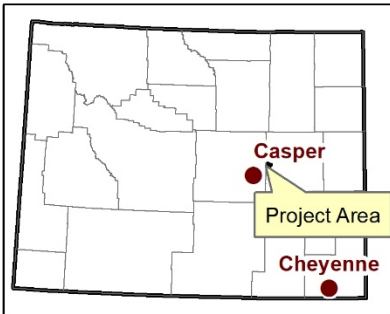
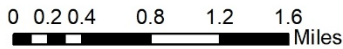
Legend

- Wind Turbines
- Riparian and Wetland
- Ute ladies'-tresses AOI
- Project Area



1 inch = 0.89 miles

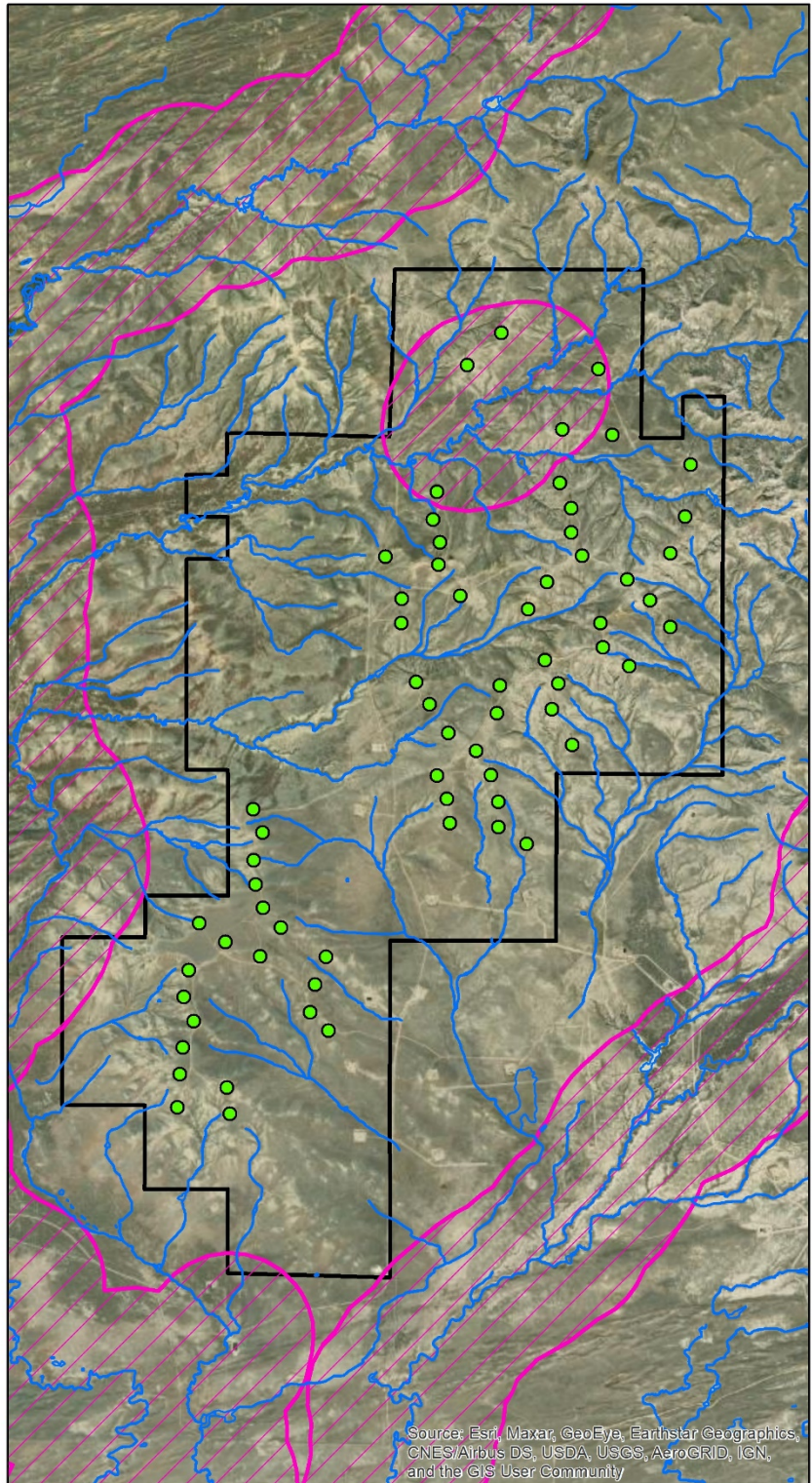
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Coordinate System: UTM NAD 1983 Zone 13

Author: T.K

Date Created: 10/19/2021



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Figure 1. Campbell Hill Wind Project site, existing turbines, riparian / freshwater emergent wetlands, and Ute ladies'-tresses Area of Influence (AOI)

Least tern, piping plover, whooping crane, pallid sturgeon, and western prairie fringed orchid

There will be no effect to the downstream Platte River species: least tern, piping plover, whooping crane, western prairie fringed orchid, and pallid sturgeon because the proposed action of issuing an eagle take permit for the Project will not result in depletions to the Platte River system.

(B) Determination: Determine the anticipated effects of the proposed project on species and critical habitats listed in item IV. Check all applicable boxes and list the species (or attach a list) associated with each determination.

Determination

No Effect: This determination is appropriate when the proposed project will not directly or indirectly affect (neither negatively nor beneficially) individuals of listed/proposed/candidate species or designated/proposed critical habitat of such species. **No concurrence from ESFO required.**

XX

Ute ladies'-tresses and Platte River species: piping plover, western prairie fringed orchid, least tern, whooping crane, and pallid sturgeon

May Affect but Not Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to cause insignificant, discountable, or wholly beneficial effects to individuals of listed species and/or designated critical habitat. **Concurrence from ESFO required.**

May Affect and Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to adversely impact individuals of listed species and/or designated critical habitat.

Formal consultation with ESFO required.

May Affect and Likely to Adversely Affect but the proposed action is for the purpose of endangered or threatened species recovery and falls under Region 6's Programmatic Consultation on Service-initiated Recovery Actions: This determination is appropriate when adverse effects are likely but the project is designed to assist with recovery of listed species and/or designated critical habitat. **Concurrence from the ESFO that the project is covered by the programmatic consultation is required.**

May affect but Not Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project may affect, but is not expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Concurrence from ESFO optional.**

Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project is reasonably expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Conferencing with ESFO required.**

Signature _____
[Supervisor at originating station]

Date 10-25-2021

Reviewing Ecological Services Office Evaluation (check all that apply):

A. **Concurrence** _____
Explanation for concurrence:

Nonconcurrence _____

B. Formal consultation required _____
List species or critical habitat unit

C. Effects are addressed in the Programmatic Consultation on R6's
Recovery Program – no further consultation needed _____

D. Conference required _____
List species or critical habitat unit

Name of Reviewing ES Office _____

Signature

Date
